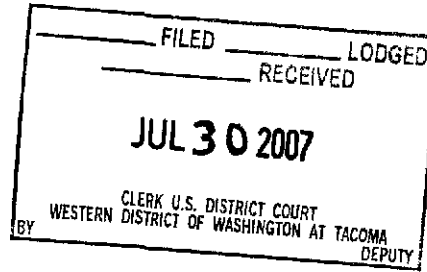


MAGISTRATE JUDGE JAMES P. DONOHUE



07-CR-05146-ORD

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WALTER L. MOSLEY,

Defendant/Petitioner.

NO. CR07-5146

FINDINGS AND ORDER ACCEPTING
DEFENDANT FOR DEFERRED
PROSECUTION, APPROVING
TREATMENT PLAN, AND DIRECTING
DEFENDANT TO TAKE TREATMENT
AS PRESCRIBED

(Clerk's Action Required)

THIS MATTER, coming on for hearing this 31st day of July, 2007, upon Defendant's Petition for Deferred Prosecution; Defendant appearing in person and by his attorney, WILLIAM R. MICHELMAN; the United States of America being represented by LT. LAUREN FISCHER, Special Assistant United States Attorney; the Court having examined and incorporated into the record Petitioner's Petition and Statement in support of deferred prosecution, the evaluation and treatment report prepared by Army Substance Abuse Program, and the files and records herein; and the Court being fully advised in the premises, does now make and enter the following:

FINDINGS AND ORDER ACCEPTING
DEFENDANT FOR DEFERRED PROSECUTION - 1

LAW OFFICE OF
WILLIAM R. MICHELMAN, INC., P.S.
A PROFESSIONAL SERVICE CORPORATION
SUITE B
7512 BRIDGEPORT WAY WEST
LAKEWOOD, WASHINGTON 98499-8377
(253) 582-3387

ORIGINAL

I. FINDINGS OF FACT

A. On or about the 30th day of December, 2006, Petitioner was charged with the offense charged in the Information. This offense occurred as a direct result of alcoholism.

B. The Petitioner suffers from an alcohol problem and is in need of treatment;

C. The probability of similar misconduct in the future is great if the problem is not treated;

D. That Petitioner is amenable to treatment;

E. An effective rehabilitative treatment plan is available to Petitioner through Army Substance Abuse Program, an approved treatment facility as designated by the laws of the State of Washington, and the Petitioner agrees to be liable for all costs of this treatment program;

F. That Petitioner agrees to comply with the terms and conditions of the program offered by the treatment facility as set forth in the attached diagnostic evaluation from Army Substance Abuse Program, attached to Statement of Petitioner filed herewith, and that Petitioner agrees to be liable for all costs of this treatment program;

G. That Petitioner has knowingly and voluntarily stipulated to the admissibility and sufficiency of the facts as contained in the written police report attached to the Statement of Petitioner filed herewith.

H. That Petitioner has acknowledged the admissibility of the stipulated facts in any criminal hearing or trial on the underlying offense held subsequent to revocation of this Order Granting Deferred Prosecution and that these reports will be used to support a finding of guilt;

From the foregoing FINDINGS OF FACT, the Court draws the following:

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3 **II. CONCLUSIONS OF LAW**

4 A. That the above-entitled Court has jurisdiction over the subject matter and
5 Petitioner WALTER L. MOSLEY in this case;

6 B. That Petitioner's Petition for Deferred Prosecution meets the requirements of
7 RCW 10.05 et. seq.;

8 C. That the diagnostic evaluation and commitment to treatment meets the
9 requirements of RCW 10.05.150;

10 D. That Petitioner is eligible for deferred prosecution.

11 **III. ORDER**

12 Having made and entered the foregoing FINDINGS OF FACT and CONCLUSIONS OF
13 LAW, it is hereby

14 ORDERED that the defendant is accepted for deferred prosecution. The prosecution of
15 the above matter is hereby deferred for five (5) years pursuant to RCW 10.05 et. seq., upon the
16 following terms and conditions:

17 A. Petition shall be on probation for the deferral period and follow the rules and
18 regulations of probation;

19 B. Petitioner shall enroll in and successfully complete the two-year treatment
20 program recommended by Army Substance Abuse Program according to the terms and
21 conditions of that plan as outlined in the diagnostic evaluation, a true copy of which is attached
22 to the Statement of Petitioner and incorporated herein by reference. Petitioner shall not change
23 treatment agencies without prior Probation approval;

24 C. The treatment facility, Army Substance Abuse Program, shall file with the United
25 States Probation Office status reports of Petitioner's compliance with treatment, monthly during
26 the first year of the deferred prosecution period and every three (3) months during the second
27 year. The Court may increase the frequency of these reports at its discretion;
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2 D. Petitioner shall notify U.S. Probation within 72 hours of any residence change.

3 E. Petitioner shall abstain during the deferred prosecution period from any and all
4 consumption of alcoholic beverages and/or nonprescribed mind-altering drugs;

5 F. Petitioner shall not operate a motor vehicle on the public highways without a valid
6 operator's license and proof of liability insurance sufficient to comply with the state laws on
7 financial responsibility;

8 G. Petitioner shall be law abiding and shall not commit any alcohol/drug related
9 offenses or other criminal offenses during the period of deferral;

10 H. Petitioner shall notify U.S. Probation within 72 hours of being arrested,
11 questioned, or cited by Law Enforcement;

12 I. In the event that Petitioner fails or neglects to carry out and fulfill any term or
13 condition of his treatment plan or violates any provision of this Order or any rule or regulation of
14 his probation officer, upon receiving notice, the Court shall hold a hearing to determine why
15 Petitioner should not be removed from deferred prosecution and prosecuted for the offense
16 charged;
17

18 J. In the event the Court finds cause to revoke this deferred prosecution, the
19 stipulated police reports shall be admitted into evidence, and Petitioner shall have his guilt or
20 innocence determined by the Court;

21 K. That the Statement of Petitioner for Deferred Prosecution shall remain sealed, and
22 all subsequent reports of documents relating to his treatment information shall be sealed, to
23 maintain confidentiality of Petitioner's treatment information;

24 L. That the Department of Licensing be notified of this order accepting the Petitioner
25 for deferred prosecution;

26 M. Upon proof of Petitioner's successful completion of five years deferral period in
27 this Order, the Court shall dismiss the charge pending against Petitioner.
28

N. Additional conditions: 14 terms of PSI Recommendation
are incorporated by reference

DONE IN OPEN COURT this 30th day of July, 2007.

James P. Sorrell
UNITED STATES MAGISTRATE JUDGE

Presented by:

WILLIAM R. MICHELMAN, INC., P.S.

[Signature]
William R. Michelman, WSBA #6803
Attorney for Petitioner

I have received a copy of the foregoing Order of Deferred Prosecution. I have read and understand its contents, and agree to abide by the terms and conditions set forth herein.

Dated: June 29, 07

Walter L. Mosley
WALTER L. MOSLEY, Petitioner

I certify that a copy of this signed Order was mailed to the subject treatment facility, on August 13, 2007. The U.S. Probation Office was also furnished a copy of this Order.

Keog A. Miller
Clerk

WD/WA 1C
(01/05)

SENTENCING RECOMMENDATION
United States District Court
Western District of Washington

United States v. Walter L. Mosley
Docket No. CR07-05146KLS-001

GUIDELINES:

Total Offense Level	<u>4</u>
Criminal History Category	<u>I</u>
Imprisonment Range	<u>0</u> to <u>6</u> months
Supervised Release Range	<u>0</u> to <u>1</u> years
Probation	<u>1</u> to <u>3</u> years
Fine Range	<u>\$250</u> to <u>\$5,000</u>

RECOMMENDATION:

Custody	<u>0 months</u>
Probation	<u>5 years</u>
Restitution	<u>N/A</u>
Fine	<u>N/A</u>
Special Assessment	<u>N/A</u>
Voluntary Surrender	<u>N/A</u>

It is respectfully recommended that Mr. Walter Mosley be granted the benefits of the deferred prosecution program. It is further recommended that the defendant be placed on probation for a period of five years so that his adjustment may be monitored accordingly. Additionally, the probation office recommends the attached conditions of deferred prosecution be ordered.

- (1) You shall not leave the judicial district without permission of the court or probation officer;
- (2) You shall report to the probation officer as directed by the court or probation officer, and shall submit a truthful and complete written report within the first five days of each month;
- (3) You shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- (4) You shall support your dependents and meet other family responsibilities;

PSI SENTENCING RECOMMENDATION

United States v. Walter L. Mosley

Docket No. CR07-05146KLS-001

Page 2

- (5) You shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- (6) You shall notify the probation officer within seventy-two hours of any change in residence or employment;
- (7) You shall abstain from the use of alcohol or other intoxicants, and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician; You shall submit to one drug and/or alcohol test within 15 days of placement on probation (or release from imprisonment) and at least two periodic drug and/or alcohol tests thereafter not to exceed eight valid tests per month, pursuant to 18 U.S.C. § 3563(a)(5) and 18 U.S.C. § 3583(d).
- (8) You shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- (9) You shall initiate, maintain, and successfully complete the two-year treatment program recommended by the evaluation report, according to the terms and conditions of that plan and the recommendations of the treating agency;
- (10) You shall permit a probation officer to visit you at any time at home or elsewhere, and shall permit confiscation of any contraband observed in plain view by the probation officer;
- (11) You shall not commit any criminal law violation and shall not commit any alcohol related offenses. You will not operate a motor vehicle without a valid operator's license and proof of liability insurance to comply with State law;
- (12) You shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- (13) As directed by the probation officer, you shall notify third parties of risks that may be occasioned by your criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm your compliance with such notification requirement.
- 14) The defendant shall not enter any establishment where alcohol is the primary commodity for sale.